

William Hodgson, Gent. APPELLANT.

The Right Honourable George Earl of Warrington, in his own Right and as Administrator of his late Brother the Honourable Henry Booth, Esq; deceased, RESPONDENT.

The said Earl, APPELLANT.

And the said William Hodgson and Thomas Warren Administrator of Thomas Warren deceased, RESPONDENTS.

The CASE of the Earl of WARRINGTON on both the APPEALS.

THE said Earl's late Brother the Honourable Henry Booth Esq; being minded to deal in the Stocks, and being ignorant of Stock-Jobbing, was prevailed on in the Year 1719, by Thomas Warren, late of the City of London Broker, since deceased, to empower him the said Warren, to act as his Broker in making Contracts for buying and selling Stock, the said Warren assuring him he would always act and do for him the said Mr. Booth, as for himself.

The said Warren being so employed by Mr. Booth, did, under Pretence of Differences in Contracts, (which he pretended to have made on Mr. Booth's Behalf) get from Mr. Booth large Sums of Money, to the Amount of several Thousand Pounds; and having drained him of all his Cash, did afterwards, by representing to him a vast Prospect of Gain for the Time to come, prevail on the said Mr. Booth to deposit with or pawn to him the said Warren, several Mortgages or Securities for Monies due to him the said Mr. Booth; and likewise prevailed on Mr. Booth to enter into four several Bonds to him the said Warren, viz. one bearing Date the 1st of August 1719, of 26540*l.* Penalty, for Payment of 13270*l.* with Interest; the other three bearing Date respectively the 1st of July, the 1st of September, and the 30th of October 1719, being together of the Penalty of 30980*l.* for Payment of 15490*l.* with Interest: All which Monies the said Warren pretended he had disbursed for Mr. Booth, for Differences of Contracts. Whereas Warren was not in the Year 1719 capable of paying or advancing any Money, nor had he Credit sufficient to be trusted by any Person, (but Mr. Booth) he being then a Prisoner in the Fleet Prison. Neither, in Fact, did the said Warren ever make any Contract for Mr. Booth, nor one Entry appearing in the said Warren's Books that he had bought any Stock for Mr. Booth of any Person, or sold for Mr. Booth to any Person, or ever paid to the Value of a single Shilling for Mr. Booth to any Person whatsoever, nor ever named to Mr. Booth any one Person he made any Contract with on his Account, although in Behalf of Mr. Booth he was desired to name the Persons with whom he made those pretended Contracts. Though by the Oath which every Broker takes, and by the Bond entered into by Warren when he was sworn into the Office of Broker, he was obliged to have made known to Mr. Booth, when thereunto required, the Name of each Person with whom he had made any Contract; and was also obliged to keep a Register, or Book, and therein fairly and truly to enter all Contracts, Bargains, and Agreements within three Days after making thereof, together with the Names of the respective Principals for whom he bought or sold, and to shew the same to the Parties upon Demand. But the said Warren, the better to colour over his Frauds, did, in some of his Pocket Books in the Hands of his Administrator (produced since his Death) make several Entries of Stocks, as bought and sold between himself and Mr. Booth: Although by his said Oath and Bond, he was not directly, or indirectly, by himself or any other, to deal for himself; nor were any such Contracts really made.

Warren having thus imposed on Mr. Booth, the better to prevent a Detection of such his fraudulent Impositions, entered into a Confederacy with the said William Hodgson (the Appellant in the Original, and Respondent in the Cross-Appeal) to assign over to him the said three Bonds of the 1st of July, the 1st of September, and the 30th of October 1719, which together were for Payment of 15490*l.* with Interest, for which Hodgson pretended to have paid to Warren the full Principal and Interest then due on all the said three Bonds, altho' in Fact he paid no Consideration to Warren for the same; and altho' he gave to Warren two Notes, each promising to pay to Warren 500 Guineas when the Money on Mr. Booth's three Bonds should be paid, which two Notes it is not to be conceived Hodgson would have given as a Premium for securing so large a Sum on a Stranger's Bonds, and at a Time when so much greater Advantage was to be made of Money, had he paid the Value of these Bonds.

Mr. Booth having (to avoid Trouble on these Bonds) retired into Holland, and having by Letter acquainted the said Earl his Brother with the Abuses he had received from Warren, the said Earl by his Agents came to an Agreement with Warren, that for 1310*l.* the Earl should purchase from Warren the said Bond bearing Date the 1st of August 1719, which was for Payment of 13270*l.* with Interest, and the aforesaid Mortgages which Mr. Booth had deposited with or pawned, but not assigned to the said Warren; and likewise one Note of the said Hodgson's for 500 Guineas payable in two Months from the Date thereof, which was given by Hodgson to Warren the 6th Day of August 1720 for Brokerage, Premiums, &c. and the aforesaid two other Notes of the said Hodgson for 500 Guineas each.

Mr. Booth afterwards gave to Warren in Trust for the said Earl, a Judgment for 26540*l.* on the said Bond of the 1st of August 1719, which the said Earl had purchased of Warren, which Judgment was signed the 15th of January 1724, and is entred as of the Michaelmas Term preceding, and the Earl received on the said Mortgages the several Sums of 1766*l.* and 500*l.* making together 2266*l.* And the said

said Earl having put in Suit the said Note against *Hodgson* for the 500 Guineas payable for Brokerage, &c. obtained Judgment thereon for 700*l.* against *Hodgson*.

In June 1725, Mr. *Henry Booth* exhibited his Bill in the High Court of Chancery against the said *William Hodgson* and the said *Thomas Warren*, to bring the said *Warren* to an Account for the aforesaid Moneys which he had by fraudulent Means prevailed on the said *Henry Booth* to pay him in the Year 1719, and to be relieved against the said three several Bonds of which the said *William Hodgson* had by a fraudulent Collusion with the said *Warren* pretended to be Assignee.

And the said Bill charged the said *Warren* with the fraudulent Practices here above set forth, and required the said *Warren* to set forth how the said several Thousand Pounds became due to him; and how the Consideration of the three Bonds assigned to *Hodgson* arose, and to discover whether any and what Contracts were really made by *Warren* for the said *Henry Booth*, and whether he really paid any, and what Sums of Money for him, and to whom, for any and what Differences on the said pretended Contracts: And whether there was any other Vendor or Vendee of Stock, or other Things which the said *Warren* pretended to have bought for the said *Henry Booth* than the said *Warren* himself. And the said Bill prayed, that the said *Henry Booth* might have an Account and Relief in the Premises.

To which Bill the said *Warren* put in five several Answers all drawn by the said *Hodgson*, and all reported insufficient. And the said *Warren* excepting to the Master's Report, the right honourable the Lord Chancellor ordered the said *Warren* to set forth how the Consideration of the said Bonds arose, and how the said pretended Debts became due to him the said *Warren*, and to answer the said other Charges in the Bill. But the said *Warren* stood out, and died in Contempt for not giving any Answer thereto: And did not in any one of his Answers specify any one Sum of Money paid on Mr. *Booth's* Account. Only in general said he paid the Money which was the Consideration of the said Bonds entred into by Mr. *Booth*, for Differences on Contracts he made with many Persons for Mr. *Booth*: **And denied he was himself Vendor or Vendee in any Contract on Mr. Booth's Account**, but did not pretend to name any one single Person he ever contracted with on Mr. *Booth's* Account, or name any one Person to whom he paid any Money for Mr. *Booth*.

Mr. *Hodgson* likewise put in several Answers to the said Bill of Mr. *Booth*, which were reported insufficient; and therein pretended he paid to the said *Warren* for the Assignment of the said three Bonds, the full Principal and Interest which were payable thereon, and that he therefore was a Purchaser thereof for a full and valuable Consideration.

Mr. *Hodgson* having fyled a Bill against the said *Warren* in May 1721, but without any Proceeding thereon in four Years and an half; he afterwards, viz. in December 1725, amended that Bill, and made Mr. *Booth* and the said Earl Parties thereto.

And Mr. *Booth* dying Intestate in February 1726, the said Earl as next of kin to him, and having a large Debt by the aforesaid Judgment due to him from his said Brother, besides another considerable Demand on his said Brother's Estate, took Letters of Administration of his Personal Estate, and as such revived Mr. *Booth's* Suit against the said *Warren* and *Hodgson*.

Mr. *Hodgson* instead of bringing a Bill of Revivor, amended again the said old Bill four several Times, and prayed a Discovery of the Assets of Mr. *Booth*, and Satisfaction thereof of his said three Bonds; and prayed an Injunction to stay the said Earl's Proceedings at Law against him on the said first mentioned Note for 500 Guineas given by *Hodgson* to *Warren*, and assigned to the said Earl, and prayed that the said Earl might prefer in Payment his the said *Hodgson's* three Bonds before the said Earl's own Judgment; charging that the said Purchase by the said Earl was with Mr. *Booth's* Money, and in Trust for him.

The said Earl, in Answer to that Bill, affirmed upon his Honour, as the Truth really was, that he the said Earl made the said Purchase with his the said Earl's own Money, and on his own Account, and for himself, and not in Trust for his Brother; and that the said Earl believed, that the said three Bonds assigned to the said *Hodgson* were obtained by Fraud; and that the said Assignment of them to the said *Hodgson* was fraudulent, and without the Payment of any Money for such Assignment; and that the said *Warren* and *Hodgson* were both united in a fraudulent Collusion against the said *Henry Booth* and the said Earl his Administrator.

Issue being joined in both Causes, Witnesses were examined, and Publication duly passed therein; and on the 27th and 28th of February, and 2d of March last, the said Causes were heard before the Lord Chancellor; and at such Hearing, tho' the said *Hodgson* had sworn in his Answer that he paid for the Assignment of the said three Bonds the full Principal and Interest then due on all the said three Bonds, yet by his three Deeds of Assignment when read, it appeared, that 5*s.* only was the Consideration of each of them, 5*s.* only being expressly mentioned in these very Deeds to be the Consideration thereof. And Mr. *Hodgson's* two Notes, each promising to pay to *Warren* 500 Guineas, when the Money on Mr. *Booth's* three Bonds should be paid, are *Testimonium rei* against the Pretence of Mr. *Hodgson's* in his Answer that he paid for them the full Principal and Interest then due thereon. And with regard to the original Consideration of the Bonds themselves by Mr. *Warren's* Books, not one Entry appeared therein, that he had bought or sold for Mr. *Booth*, or ever paid to the Value of a single Shilling for Mr. *Booth*, to any Person whatsoever, nor did *Warren* ever name to Mr. *Booth* any one Person he made any Contract with on his Account; and 'twas fully prov'd in Behalf of the said Earl, that he had really and *bona fide* paid the said 1310*l.*

The said Earl's Councill therefore (*inter al'*) insisted, that the said three Bonds in the Hands of the said *Hodgson* being at first fraudulently obtained by *Warren*, and afterwards as fraudulently assigned to *Hodgson*, without any valuable Consideration, ought to be delivered up and cancelled, and that the said *Hodgson's* Bill seeking a Satisfaction for the same should be totally dismissed.

Decree.

But the Lord Chancellor was pleased to order and decree (*inter al'*), " That an Account should be taken by Mr. *Bennet* sen. of what was due to the said *Hodgson* on the said three Bonds assigned to him for Principal and Interest, and also for his Costs in these Suits, and that the same should be paid by the said Earl out of the Assets of the said Mr. *Booth* (if any) after a Deduction of what was due to the said Earl on the said Judgment. His Lordship declaring, that the said Judgment was to be taken as a subsisting Judgment for the said principal Sum of 13270*l.* and for the Interest thereof, from the Date of the Bond for that Money. And that the said Earl should retain towards Satisfaction thereof out of the Assets of the said Mr. *Booth*, deducting thereout the said several Sums of 1766*l.* and 500*l.* which the said Earl had received in the Life-time of the said Mr. *Booth* on the aforesaid Mortgages of the said Mr. *Booth*, purchased by the said Earl of the said *Warren*. And decreed, that

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“ the Bill of the said Mr. *Booth* which was revived by the said Earl as aforesaid, should be dismissed as
 “ against the said *Warren*, and should be likewise dismissed as to the setting aside of the said Mr. *Booth*'s
 “ three Bonds assigned by the said *Warren* to the said *Hodgson*.

Mr. *Hodgson* being dissatisfied with this Decree, petitioned the Lord Chancellor to rehear the said Causes, and prayed on such Petition that the said Earl should produce on such rehearing an Exhibit mention'd in the Depositions in these Causes, said to purport a Release of the said Bond of the 1st of August 1719. Upon which Petition the Lord Chancellor directed, that what was prayed about producing such Exhibit should be moved in open Court; and being moved accordingly, but not one single Precedent being shewn in Behalf of the Motion, his Lordship was pleased to deny it.

Mr. *Hodgson* on this dropped his Petition to rehear the said Causes before the Lord Chancellor, and hath appealed to your Lordships against such Part of the said Decree, as decreed the Earl to retain out of the Assets of Mr. *Booth* sufficient to satisfy what remained due to him on his Judgment, as also against the Denial of the said Motion.

But the said Earl of *Warrington* is advised, and humbly hopes it will appear, that the said Appellant *Hodgson* has no just Reason to appeal from the said Decree, but that the said Earl of *Warrington* has Reason to appeal from the same; for that the said three Bonds assigned by the said *Warren* deceased to *Hodgson*, are not thereby decreed to be delivered up to be cancelled, and the said *Hodgson*'s Bill dismissed with Costs, and therefore the said Earl has brought his cross Appeal before your Lordships. And the said Earl humbly hopes, that the said Decree shall be varied in the Particulars insisted on by the said Earl and that no Alteration shall be made in the said Decree in Favour of the said Appellant *Hodgson* for the following Reasons.

- I. For that the said three Bonds were obtained by the said *Warren* by gross Fraud, Imposition and Misrepresentation, under a false Pretence of Payments by *Warren* for Mr. *Booth*, to the Amount of the full Money payable by these Bonds, tho' not one Shilling was really paid, and tho' the said *Warren* was unable to make any such Payments; and under Pretence of Payments for Differences on Contracts in Stock-jobbing for Mr. *Booth*, tho' not a single Contract was really made for him: The said three Bonds ought not therefore in Conscience to stand in Force.
- II. For that Mr. *Hodgson*, being in Collusion with the said *Warren*, and entitled only to the same Right as *Warren* himself had, which appears to be founded on Fraud, ought not therefore to have any Payment of these Bonds decreed to him; especially since the Averment in his Answer of his having purchased these Bonds for the full Principal and Interest then due thereon, appears to be grossly false, even by the very Deeds of Assignment thereof produced by Mr. *Hodgson*; by which *Hodgson* appeared most plainly to be Assignee of those Bonds without the least valuable Consideration whatsoever; and by Mr. *Hodgson*'s own two Notes to pay *Warren* 1000 Guineas when all the Money on these Bonds should be paid. And as to the said Appeal of Mr. *Hodgson* against the said Decree, his Reasons for such Appeal are without any Foundation of Truth or Justice: And his Appeal upon the Denial of the said Motion for the Earl's producing the Exhibit aforesaid, is an Attempt to obtain an Order contrary to the fix'd and establish'd Rules and Practice of the Court of *Chancery*, as the Earl is advised.
- III. Supposing the Bonds from Mr. *Henry Booth* assigned by *Warren* to *Hodgson* were good, and not to be set aside for Fraud, then the Bond of the 1st of August 1719. assigned to the Earl of *Warrington* is also good; and the same being assigned in Consideration of 1310^{l.} actually paid, the Judgment had thereupon in the Life-time of Mr. *Booth*, for the Benefit of the Earl of *Warrington*, is to be paid in a Course of Administration, and is to be preferred before the Bonds assigned to *Hodgson*; and the Decree is right in directing that the Earl, who is Administrator to his Brother, should retain for that Debt out of the Assets of his Brother; but even in that Case, as *Hodgson* may give an unnecessary Trouble, tho' he knows there is no Prospect of Assets, the said Earl humbly apprehends, that the Costs of the Account of Assets ought to have been reserved.
- IV. There is no Colour for saying the Earl purchased the Bond and the said Notes from *Warren* in Trust for Mr. *Booth*, or with his Money, and tho' that is suggested by the Bill, it is expressly denied by the Answer of the Earl which was read for that Purpose at the Hearing. And tho' it is probable the said Earl by buying in the said Debts might have an Intention to be kind to his Brother, yet he never intended any Kindness to the said *Hodgson* by the said Transactions, nor had he any Reason so to do, and the said Debt could never be intended to be released, because it was assigned by *Warren* to the said Earl; and there was an express Covenant from the said *Warren* in the Assignment, that he would not release it. And therefore if by Mistake this Bond had been included in the general Words of a Release, such general Release ought to be restrain'd by Construction to such Things only as were under the Consideration of the Parties and intended to be released, and ought not to operate upon Demands designed to be kept on foot.
- V. That the Note for 500 Guineas given by *Hodgson* to *Warren*, being for a just Debt due from *Hodgson* to *Warren*, and assigned by *Warren* to the Earl for a valuable Consideration, the same ought to prevail against *Hodgson*, and there is no Equity to intitle him to any Relief against the said Note.

Wherefore the said Earl of Warrington humbly hopes that the said Hodgson's Bill shall be dismissed, and that the said three Bonds assigned to Hodgson shall be set aside and cancelled, or if they shall be deemed to be good and valid, that then the Bond of the 1st of August 1719. assigned to the Earl of Warrington, upon which Judgment is obtained, shall be first satisfied as the Decree has already directed; and that the Costs as to the Account of Assets shall be reserved, or that your Lordships will give such other Directions as your Lordships in your great Wisdom shall think fit.

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The Right Honourable George Earl of Warrington in his own Right, and as Administrator of his late Brother the Honourable Henry Booth, Esq; deceased, RESPONDENT.

The said Earl, APPELLANT.

And the said William Hodgson and Thomas Warren, Administrators of Thomas Warren deceased, RESPONDENTS.

The CASE of the Earl of Warrington on both the APPEALS.

To be heard at the Bar of the House of Lords, on the 19th Day of February 1730.

Adjdg'd That so much of the Decree of the Court of Chancery as relates to the Dismission of E. Warrington's Bill to Reverse that the Bonds mention'd in the s^d Decree to be entered into by the Earl's Brother to Warren be deliv'd up to be cancell'd and that a peremptory Injunction be Awarded to prevent proceedings at Law And further that so much of the same Decree as Orders an Att. to be taken by a Master what was due on the s^d Bonds to Hodgson be Reversed and that the Bill exhibited be Dismiss'd and that he do pay the s^d Earl Costs on Bill and also 200 on Oration of bringing this Perpetuous Appo